

REMARKS

Applicant acknowledges the Examiner's acceptance of the amended drawings.

All of the claims have been amended to remove the term "natural". Claims 5 and 15 have been amended to more particularly describe the instant invention. These amendment are supported by the original application, page 8, first full paragraph. Claim 14 has been amended to include all of the subject matter of claim 17. Claim 17 has been canceled. Claim 18 has been amended to depend from claim 14. Claim 20 has been amended to include all of the subject matter of claim 21. Claim 20 has further been corrected by replacing the term "missing" with the term "mixing". Claim 21 has further been canceled. New claims 24 and 25 have been added and both of these new claims depend from claim 14. New claim 24 is based on claim 9 and new claim 25 is based on a combination of claims 12 and 15 and the portion of claim 1 relating to the subject matter of the "drying system". A marked-up version of the amended claims is enclosed. No new matter has been added by virtue of these amendments and consideration of these new and amended claims is respectively requested.

The Examiner has rejected all of the claims as indefinite under 35 U.S.C. section 112 because of the use of the term "natural". Applicant amended the claims to remove the term "natural". The Examiner further rejected claims 5 and 15 as indefinite under 25 U.S.C. section 112 for use of the term "optimal pH level". Applicant has amended these two claims with a specific range of pH levels. It is believed that the amended claims are not indefinite and satisfy 35 U.S.C. section 112.

The Examiner has rejected claims 1-7, 12, 14-16, 20, and 22, under 35 U.S.C. section 103 based upon Anderson (US 5,162,129), in view of Sermanni (US 6,058, 110),

Davenport (US 6,045,070), and Peters (U.S. 5,352, 469). The Examiner contends that Anderson discloses all of the elements and limitations of claim 1 except means for adjusting pH, mounting the grinding assembly on a movable platform, and the drying system's inclusion of an extruder. The Examiner further contends that Sermanni discloses the use of PH probes, Davenport discloses building the grinders as a mobile system, and Peters discloses use of an extruder following a drying procedure. Under the patent laws, "[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977 (Fed. Cir., 2006). (citations omitted). Applicant believes the Examiner has failed to make a prima facie case of obviousness with respect to the rejected claims.

With respect to the refusal of claim 1, Applicant respectfully points out that the Examiner has failed to identify the element of "means for mixing an enzymatic digest medium" as required by claim 1 (a). Anderson discloses the addition of extraneous enzymes (34) to ground protein waste (termed ground animal parts in Anderson) at the end of the mulling stage (10) and before the protein hydrolysis stage (20) of Anderson. (Anderson, Col. 6, line 65 to Col. 7, line 21). The heat exchanger (34) in Anderson serves as the mixing means of Applicant's claim 1(b) to mix the ground protein waste with the enzymatic digest medium (termed extraneous enzymes (34) in Anderson). (Anderson, Col. 7, lines 18-21). This mixing forms the protein solubles mixture, termed the "pre digestion mixture" in Anderson. (Col. 8, lines 48-51). Nowhere does Anderson disclose a means for mixing an enzymatic digest medium.

What the Examiner has identified as the means for mixing an enzymatic digest medium, reference 20 in Figure 1 of Anderson, is described in Anderson as the protein hydrolysis stage. (Anderson, Col 6, lines 65-68). Anderson describes this stage and the related apparatuses as digesters, (Anderson, Col. 8, lines 48-55), i.e. "means for digesting . . . said protein solubles mixtures". Thus the Examiner has only identified part of the element of Applicant's claim 1(c), and not the means for mixing of Applicant's claim 1(a). Instead, Anderson discloses the use of "commercially available preparations" for the extraneous enzymes (34). (Anderson, Col. 7, lines 22-25). It is therefore believed that not only does Anderson fail to disclose means for mixing an enzyme digest medium, Anderson further teaches away from the use of such means in favor of using commercially available preparations. *In re Grasselli*, 713 F.2d 731, 743, 218 U.S.P.Q. 769, 779 (Fed. Cir. 1983). For this reason, it is believed that the Examiner has failed to present a prima facie case of obviousness of claim 1 and claim 1 is patentable over the references cited by the Examiner.

The Applicant further contends that with respect to claim 1, it appears that the Examiner has pieced together prior art references using claim 1 as a guide. *See In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q. 2d 1780, 1784 (Fed. Cir. 1992) (stating that "[i]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious"). Applicant notes that obviousness is to be determined as to the claim as a whole and not individual claim elements and limitations. The Examiner provides no motivation to combine the four separate prior art references to teach claim 1 as a whole.

With respect to the refusal of claims 1 and 2, Anderson clearly teaches away from the use of pH adjusting ingredients. (Anderson, Col. 7, lines 45-50); *In re Grasselli*, 713 F.2d at 743, 218 U.S.P.Q. at 779. Anderson specifically states that "no extraneous buffering or pH-adjusting ingredients are necessary. The natural pH of the suspension is sufficient." (Anderson, Col. 7, lines 47-50). Because Anderson explicitly denounces the use of pH-adjusting ingredients, it is therefore believed that it is not obvious to combine Anderson with Sermanni, there is no motivation to combine Anderson and Sermanni, and Anderson teaches away from combination with Sermanni. It is therefore believed that claim 2 is patentable over the references cited by the Examiner and in condition for allowance.

With respect to the refusal of claim 3, the Examiner states that "[i]t would have been obvious to ensure that the pumps in Anderson's invention were centrifugal pumps if it was deemed that this type of pump produces the best results." (Office Action, pg. 6). Applicant respectfully asserts that the Examiner's conclusory statement fails to provide evidence of a motivation to combine the Examiner's knowledge of centrifugal pumps with Anderson's invention. The Examiner has merely shown that there is a motivation to try the use of centrifugal pumps with the apparatus of Anderson. *See In re Lindell*, 385 F.2d 453, 155 U.S.P.Q. 521, 523 (C.C.P.A. 1967) (rejecting the "obvious to try" test). Because the Examiner has provided no reference providing a motivation to combine, it is believed that the Examiner has failed to present a prima facie case of obviousness of claim 3.

With respect to claim 4, the Examiner admits that Anderson does not disclose the use of an inductor nozzle and a centrifugal pump, but provides examples that these

elements are commonly used in the art, citing Dvorak (US 20020197665) and Chevron (US 4,443,540). Although the Examiner has cited six references in support of the section 103 refusal of claim 4, the Examiner does not identify in any of these references a motivation to combine Anderson with an inductor nozzle and a centrifugal pump. It is therefore believed that the Examiner has failed to present a prima facie case of obviousness of claim 4.

Applicant's claims 6, 7, and 16 require the use of either lactic acid or phosphoric acid for use in adjusting the pH of solutions. Although the use of acids in adjusting pH is well known in the art, there are a multitude of acids from which one of ordinary skill in the art may choose. The Examiner presents no disclosure or motivation for the specific use of lactic acid or phosphoric acid for use in adjusting the pH of solutions used in recycling of protein waste. For this reason it is believed that the Examiner has failed to present a prima facie case of obviousness of claims 6, 7, and 16.

With respect to claim 12, the Examiner states that "it is well known in the art that oscillating belts are useful as means to link extruders to drying apparatuses". (Office Action, pg. 7-8). The Examiner provides no reference to show that oscillating belts are useful as means to link extruders to drying apparatuses. Furthermore, none of the references cited by the Examiners as the basis of the section 103 rejection disclose such use of an oscillating belt or the motivation to use an oscillating belt. Because the Examiner has provided no reference providing a motivation to combine or disclosing the use of an oscillating belt to link an extruder and a drying apparatus, it is believed that the Examiner has failed to present a prima facie case of obviousness as to claim 12.

The Examiner had indicated that claims 8-11, 13, 17-19, 21, and 23 would be allowable if rewritten in independent form with removal of the term "natural". Claim 17 has been rewritten in independent form as amended claim 14. Claim 21 has also been rewritten in independent form as amended claim 20. It is believed that claims 14 and 20 are allowable as they contain subject matter indicated as allowable by the Examiner. It is further believed that claims 15, 16, 18, 19, and 22-25 are allowable as these claims depend from either claim 14 or claim 20. The Applicant respectfully requests the new and amended claims and the application as a whole be reconsidered and suggests that the application is now in condition for allowance.

The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account Number No. 50-3021 belonging to Brown Winick Law Firm.

Respectfully submitted,

By:  _____

Camille L. Urban - Reg. No. 46,948
G. Brian Pingel - Reg. No. 26,216
Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.
Regency West 5
4500 Westown Pkwy Ste 277
West Des Moines, IA 50266-6717
Telephone: 515/242-2400
Facsimile: 515/242-2448

ATTORNEYS FOR APPLICANT